



December 14, 2000

Mr. John Steiner  
Division Chief  
City of Austin Law Department  
P.O. Box 96  
Austin, Texas 78767-96

OR2000-4698

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143113.

The City of Austin (the "city") received a request for the current taxi license records regarding a specific individual. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.<sup>1</sup>

Section 552.101 of the Government Code excepts from required public disclosure "information that is confidential by law, either constitutional, statutory, or by judicial decision." Accordingly, section 552.101 encompasses confidentiality provisions regarding criminal history information. Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential by statute. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the department maintains, except that the department may disseminate this information as provided in chapter 411, subchapter F of the

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<sup>1</sup>The submitted information consists of a one-page criminal history record, a document showing a set of fingerprints, and an answer sheet for a ground transportation test.

may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from the department or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Please note, however, that driving record information is not confidential under chapter 411. *See* Gov't Code § 411.082(2)(B).

The submitted information includes one page of CHRI generated by TCIC or NCIC. You explain that this document was obtained by the subject of the request for information from the Department of Public Safety and submitted by him to the city with his application for a chauffeur's permit. We find that the release of this document is governed by chapter 411. Therefore, the city may not release this document to the requestor. The remainder of the submitted information does not contain CHRI generated by TCIC or NCIC. Therefore, the city may not withhold the fingerprints or the answer sheet under chapter 411 as encompassed by section 552.101.

However, we note that the fingerprint document contains a social security number. Section 552.101 encompasses confidentiality provisions such as the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). This provision makes confidential social security numbers and related records that have been obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* In this case, it is not apparent to us that the social security number that appears on the fingerprint document has been obtained or maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the city to obtain or maintain this social security number. Therefore, we have no basis for concluding that the social security number at issue here is confidential under section 405(c)(2)(C)(viii)(I). We caution you, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Gov't Code § 552.352. Prior to releasing the social security number, the city should ensure that it has not been obtained or maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

In conclusion, the city must withhold the one-page CHRI report under chapter 411 as encompassed by section 552.101. Furthermore, the city may need to withhold the social security number that appears on the fingerprint document under section 552.101 in conjunction with federal law. The city must release the remaining submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

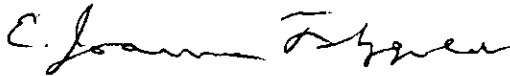
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "E. Joanna Fitzgerald".

E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF\seg

Ref: ID# 143113

Encl: Submitted documents

cc: Mr. William C. Rempel  
National Correspondent  
Los Angeles Times  
Times Mirror Square  
Los Angeles, California 90053  
(w/o enclosures)